No. 16-1027

IN THE

Supreme Court of the United States

RYAN AUSTIN COLLINS

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Writ of Certiorari to the Supreme Court of Virginia

BRIEF OF AMERICAN MOTORCYCLIST ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICUS CURIAE*

The American Motorcyclist Association ("AMA") is the world's largest motorcycling organization, with more than 200,000 members. Since 1924, the AMA has protected the future of motorcycling and promoted the motorcycle lifestyle. AMA members come from all walks of life, and they navigate many different routes on their journey to the same destination: freedom on two wheels.

The AMA advocates for motorcyclists' interests in the halls of local, state and federal government, the committees of international governing organizations, and the court of public opinion.

This case presents an issue of particular importance to *amicus* and its members, who urge this Court to protect motorcyclists' rights to privacy in their vehicles to the same as extent as other members of the public.

The legal issues in this case are ably addressed by Petitioner. *Amicus* submits this brief to highlight factual issues surrounding motorcycle ownership and the use of motorcycle covers.

SUMMARY OF ARGUMENT

This Court's analysis should not be affected by the fact the vehicle searched was a motorcycle rather than a car or truck. Millions of law-abiding

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[1] The parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represents that this brief was not authored in whole or in part by counsel for a party and that none of the parties or their counsel, nor any other person or entity other than *amicus*, its members, or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Americans ride motorcycles and enjoy the motorcycle lifestyle. There is nothing inherently suspicious—and no inherent justification for a search—in the use or ownership of a motorcycle.

Nor is there anything suspicious in the use of a motorcycle cover, which the opinions below mistakenly describe as a "tarp." Pet. App. 6, 35. Motorcycle covers are commonly used to protect motorcycles from the elements, to provide privacy, and to prevent theft. By removing and looking beneath the cover of the motorcycle parked in the curtilage of the home, the police conducted a warrantless search in violation of the Fourth Amendment.

ARGUMENT

I. Law-Abiding Americans Enjoy Motorcycle Ownership.

Although this case involves the search of a motorcycle parked in the curtilage of a home, motorcycle owners enjoy rights to protection from unreasonable searches and seizures that are no different from the rights enjoyed by the owners of other types of vehicles. The search of a motorcycle should be treated no differently than the search of any other vehicle.

Popular culture—as far back as *The Wild One* (Columbia Pictures 1953), featuring Marlon Brando—often portrays motorcyclists as dangerous and lawless. *See* Tracy Reilly, *Marks of Mayhem & Murder: When a Few Bad Mongols Spoil the Bunch, Should the Government Seize a Motorcycle Association's Registered Trademark*, 7 Buff. Intell. Prop. L.J. 1, 8 & n.24 (2009) (noting the

"stigmatization" of motorcyclists). But in truth, millions of law-abiding, hard-working Americans enjoy riding motorcycles. *Id.* at 8.; *see also* Randal Montgomery, *The Outlaw Motorcycle Subculture*, 1 Can. J. Criminology & Corrections 332, 332 (1976) ("It is important to differentiate between the vast majority of 'normal' motorcycle riders and the 'deviant' minority.").

Many are attracted to the experience of riding. As cars increasingly isolate us from the world outside, with ever-more technological distractions, motorcycles still require riders to feel the wind, hear the sound of the traffic, and engage with the world around them. *See* James G. Stevens, *If I Have to Explain Why You Wouldn't Understand*, 56 Ala. Law. 358, 359–60 (1995) ("[Y]ou must be in tune with everything that is going on around you. . . . [Y]ou are overwhelmed with the sense . . . that you have become a part of the surroundings."). Riding a motorcycle presents a challenge, requiring the rider to maintain constant attention and concentration. *Id.* ("Riding requires the utmost of concentration. One mistake riding is all you get.").

A passage from *Zen and the Art of Motorcycle Maintenance* describes the experience of riding a motorcycle:

> [In a car,] [y]ou're a passive observer and it is all moving by you boringly in a frame.
>
> On a cycle the frame is gone. You're completely in contact with it all. You're *in* the scene, not just watching it anymore, and the sense of presence is overwhelming. That concrete whizzing by five inches below your foot is the real thing, the same stuff you can

> walk on, it's right there, so blurred you can't focus on it, yet you can put your foot down and touch it anytime, and the whole thing, the whole experience, is never removed from immediate consciousness.

Robert M. Pirsig, *Zen and the Art of Motorcycle Maintenance* 5 (HarperTorch 2006) (1974).

Others relish the camaraderie of motorcycle culture. More than a hobby, motorcycling is a lifestyle, with a shared bond between riders. Motorcyclists can ride with groups at the local, state, or national level, and many participate in charity events. *See* Stevens, 56 Ala. Law. at 359–60 ("They informed me that there are rider's clubs around the state that include all levels of society, from blue collar workers to professionals, and spanning all age groups.").

Motorcycles also benefit the environment: "The rising popularity of motorcycles can be attributed to the benefits of motorcycle usage, including greater fuel-efficiency, and can lead to decreased roadway congestion while inflicting very little wear and tear on American roadways." H.R. Rep., No. 110-655, at 1–2 (2008).

Regrettably, some members of law enforcement have accepted popular culture's portrayal of motorcyclists and assume that riding a motorcycle is, itself, suspicious. This potential for prejudice against motorcyclists has been recognized and addressed by Washington State, which requires local law enforcement to adopt policies condemning "motorcycle profiling," which it defines as "the illegal use of the fact that a person rides a motorcycle or wears motorcycle-related paraphernalia as a factor in

deciding to stop and question, take enforcement action, arrest, or search a person or vehicle." Wash. Rev. Code Ann. § 43.101.420.

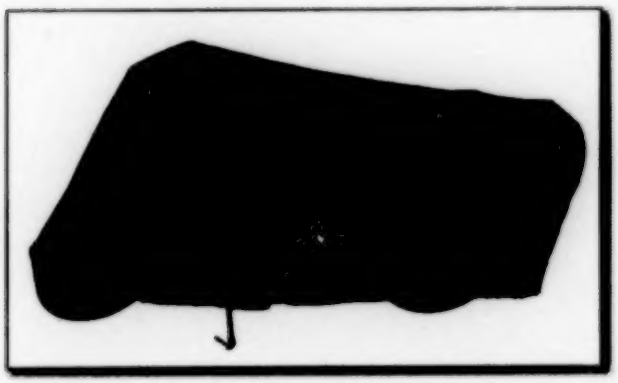
Just like Americans who own cars and trucks, American motorcyclists have a reasonable expectation of privacy in their vehicles parked in the curtilage of their homes. This Court should hold that all vehicles—regardless whether they have two wheels or four—are protected from warrantless searches while parked in the curtilage of a home.

II. Motorcycle Covers Serve Lawful Purposes.

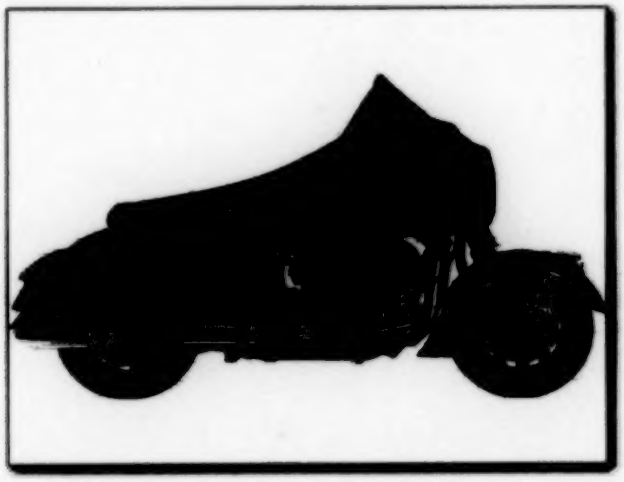
Nor should this Court treat the use of a motorcycle cover as inherently suspicious. Covers are often used by law-abiding motorcyclists to protect their vehicles against the elements, to provide privacy, and to prevent theft.

The courts below mistakenly referred to the motorcycle cover as a "tarp." As Petitioner notes, the motorcycle was actually covered by a motorcycle cover, designed to protect a motorcycle. *See* Pet. Br. at 5 n.2 (citing Pet. App. 6, 35, 114).

Covers come in all shapes and sizes. At one extreme, a cover might be a fully waterproof shell: Such a cover provides security and protection at the expense of convenience.



At the other extreme, when traveling, a rider might bring only a lightweight, portable cover, such as a "half-cover" that covers only a portion of the motorcycle:



The most obvious purpose of covers is protecting motorcycles from the elements. When parked outside, motorcycles require covers for protection from dirt, dust, snow, and rain. Even if a motorcycle is stored in a garage, a cover made from a light, soft, abrasion-resistant fabric can protect the motorcycle from dust and scratches. Motorcyclists can select different

covers depending on the environment in which they primarily ride and their subjective tradeoff between convenience and protection.

The variations are endless. Covers intended to protect bikes from rain will come with a waterproof lining. Some may be merely water-resistant (but breathable). Others are truly waterproof and include moisture vents and grommets for tying down the cover. Protecting motorcycles from damage from sunlight requires a cover with UV protection. Other possible features include heat-resistant panels, which avoid the problems that arise when covers are placed immediately onto hot exhausts.

Covers also play an important role in protecting motorcycles from theft. To steal a covered motorcycle, the thief must first remove the cover. Not only does this delay the theft and force the potential thief to engage in suspicious activity, but many covers have locking mechanisms, such as grommets at the bottom through which cable locks can be threaded.

In addition to making theft more difficult, covers can also prevent theft by concealing the bike. A covered bike will be far less likely for thieves to notice, and even when a potential thief knows that a motorcycle is under the cover, the value of the cycle cannot be determined without removing the cover. Motorcycle owners—particularly those without garages—rely on covers to protect their privacy and avoid advertising their ownership of an expensive bike to the world.

Within the motorcycle community, the cover is understood to be an integral part of the motorcycle. Regardless whether covers are secured with locks,

motorcyclists do not expect the covers to be removed from their motorcycles by strangers.

Removal of a motorcycle's cover without the owner's permission would be, at the least, highly suspicious. It would almost certainly be understood as a prelude to theft (either of the motorcycle itself or personal possessions stored on the motorcycle) or vandalism.

The cover on a motorcycle can thus be understood as the rough equivalent of the top of a convertible. Even when the cover (or car) is unlocked, its removal still intrudes upon the reasonable expectations of privacy of the vehicle's owner.

Motorcycles should receive no less protection from unreasonable searches than other vehicles. When the police removed the cover from Petitioners' motorcycle, a search occurred. And as Petitioner contends, because that search occurred without a warrant and in the curtilage of a home, the search violated the Fourth Amendment.

Amicus and its members urge this Court to hold that motorcyclists' protections against unreasonable searches and seizures should not be limited based on the type of vehicle at issue.

CONCLUSION

Amicus expresses no opinion regarding petitioner's ultimate guilt or innocence. Motorcycle theft is a serious crime that warrants serious punishment, but motorcycles should not be subjected to unreasonable searches and seizures. The judgment of the Supreme Court of Virginia, which fails to respect these rights, should be reversed.

November 20, 2017 Respectfully submitted,

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